IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 70 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PHATANDAS CHELLARAM BHARANEY

Versus

AHMEDBHAI NOORBHAI DIWAN

Appearance:

1. Civil Revision Application No. 70 of 2004

PARTY-IN-PERSON for Petitioner No. 1

MR SP MAJMUDAR for Respondent No. 1,3,5-7

RULE SERVED for Respondent No. 2,4

NOTICE SERVED for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 15/09/2004

ORAL JUDGEMENT

1. This Civil Revision Application under Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act,1947 (for short "the Rent Act") is preferred by the landlord being aggrieved by judgment and decree passed by learned Joint District Judge, Vadodara in Regular Civil Appeal No.113 of 2001 on 20th October, 2003. The said appeal arose out of judgment and decree rendered by learned Small Causes Judge, Vadodara on 30th April, 2001 in Rent Suit No.7 of 1985. The said suit as well as the appeal were preferred by the present revisionist. He would be hereinafter referred to as the plaintiff and the opponents would be hereinafter referred to as the defendants with their respective numbers.

2. The plaintiff had preferred the suit against the defendants for eviction of the suit property on following grounds :

(i) Subletting;

(ii) Act injurious to the property;

(iii) Permanent construction without permission of the landlord; and

(iv) Nuisance and annoyance to the neighbours.

2.1 The Trial Court, after considering the evidence led by parties, concluded that the plaintiff had failed to prove these aspects and was, therefore, not entitled for a decree of possession and ultimately, dismissed the suit.

2.2 Aggrieved by the said judgment and decree, the plaintiff approached the District Court, Vadodara with Regular Civil Appeal No.113 of 2004. The District Court found that no error was committed by the Trial Court and ultimately, dismissed the appeal with costs. The plaintiff has, therefore, approached this Court with this Civil Revision Application under Section 29 of the Rent Act.

2.3 Before proceeding to merits of the Revision Application, certain facts need to be stated :

2.3.1 The plaintiff has, at all levels, represented his case himself as a party-in-person. He had initially preferred Second Appeal before this Court to challenge the judgment and decree of the District Court in the Civil Appeal, unaware about the provisions contained in Section 29 of the Rent Act. The said Second Appeal

ultimately came to be converted into this Civil Revision Application. The plaintiff - Revisionist was offered legal assistance which he declined, as is reflected from an earlier order passed on 11th August2,004 (Coram : D.P.Buch,J). The revisionist has tendered his written arguments which are forming part of the record. He also appeared before this Bench and submitted that he restricts his arguments to written submissions. He does not want to add any further ground in support of the Revision Application.

3. A perusal of the written arguments indicates that he is aggrieved by the judgment of both the Courts below with appreciation of evidence made by the said Courts, as can be seen from contents of Paragraph Nos.7 and 8 of the written arguments. He has also relied on certain judicial pronouncements as per Annexure-A to the written arguments which would be dealt with by this Court in the paragraphs to follow.

4. The Revision Application is being opposed to by learned Advocate Mr.S.P.Majmudar on behalf of opponent nos.1, 3, 5 and 7. Rest of the opponents have chosen not to contest this Revision Application.

4.1 Learned Advocate Mr.Majmudar submitted that the scope for this Revision under Section 29 of the Rent Act is very limited and the Court may not re-appreciate the evidence. Still, however, to satisfy this Court even on merits, learned Advocate Mr.Majmudar has drawn attention of this Court to the evidence and the conclusions arrived at by the Courts below. He submitted that there is a specific admission on part of the plaintiff in his deposition that defendant no.1 was in possession of the suit premises. If that be so, the plaintiff's case of subletting could not have been accepted by the Courts below, as has rightly been done. Learned Advocate Mr.Majmudar submitted that plaintiff himself has changed his stand from time to time on aspect of subletting. At one point of time, he says that the premises is sublet by defendant no.1 to defendant nos.2 and 3 and another point of time, he says that it is sublet to defendant nos.4, 5, 6 and 7 and as such, when the possession is admitted to be with defendant no.1, there is no question of subletting as per position of law established by various pronouncements. For establishing subletting, the aspect of the tenant parting with exclusive possession of the suit premises for consideration has to be established and that having not been done, the Courts below have rightly concluded that there was no subletting. Mr.Majmudar submitted that the contention regarding the document of

partnership being not genuine, would pale into insignificance so far as this litigation is concerned.

4.2 As regards the other grounds, namely, damage to property and making permanent construction in the property is concerned, Mr.Majmudar submitted that there is an admission on part of the plaintiff that he has never entered the premises and his case, therefore, regarding some alleged permanent construction being made in the premises has rightly been disbelieved by the Trial Court. Mr.Majmudar submitted further that there is no evidence led by the plaintiff to show any damage to the suit premises.

4.3 As regards the nuisance and annoyance, it is admitted by the plaintiff that none of the neighbours have made any complaint to him. The plaintiff has not examined any neighbour in this regard and as such, this aspect cannot be said to have been proved by the plaintiff and the Courts below have rightly rejected these allegations. Mr.Majmudar, therefore, submitted that keeping in light the limited scope for the Revision, the Revision Application may be dismissed. Mr.Majumdar has placed reliance on the decision of this Court in the case of Kasambhai Ismailbhai through heirs and legal representatives Vs. Bavabhai Karasanbhai Patel, 1998 (2) GLH 606 and decision of the Apex Court in the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (Dead) through LRs.,1998 (2) GLH 736.

5. This Court has given due consideration to the contentions raised before it by both the sides. This Court has also examined the Records and Proceedings.

6. This is a Revision Application under Section 29 of the Rent Act and the scope has been circumscribed to correction of a substantial error of law which goes to the root of the decision. The Apex Court in the case of Patel Valmik Himatlal (Supra) held that scope for Revision under Section 29 of the Rent Act is very limited and the powers are to be exercised only for a limited purpose of correcting a substantial question of law which would go to the root of the decision. Reappraisal of evidence by the High Court and the substitution of its own views was held to be impermissible by the Apex Court in the said judgment.

6.1 Likewise, in the case of Kasambhai Ismailbhai (Supra), this Court observed that a High Court while exercising powers under Section 29 of the Rent Act, interference by the High Court is uncalled for in respect

of concurrent finding of fact by two Courts below.

7. A perusal of Section 29 of the Rent Act indicates that Subsection 2 is relevant. Same can be quoted as under :

Section 29 - Appeal

(1) X X X

(2) No further appeal shall lie against any decision in appeal under sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit.

(3) X X X

7.1 A bare reading of this provision would also indicate that while exercising revisional powers under Section 29(2) of the Rent Act, this Court is required to examine only the question whether the decision of the lower Appellate Court was in accordance with law or not.

8. With the above settled proposition of law, if the fact of the present case are seen, the case of the plaintiff - revisionist is mainly founded on the alleged error on part of the Courts below in evaluating the evidence. The revisionist in his written arguments as well as in oral submissions submitted that the Courts below have not considered that the partnership deed was produced at a later point of time and the same could not have been relied upon by the Courts below for the reason that the date was different, it is a back dated documents etc. It is canvassed that it should have been held to be a fictitious document. However, on perusal of the judgment of both the Courts below, it is clear that the Courts below have considered relevant aspects, particularly the fact that the plaintiff has admitted, in terms, that defendant no.1 - tenant was in possession and there is nothing to show that he has parted with exclusive possession of the suit premises for consideration. The aspect of subletting, therefore, could not have been accepted by the Courts below as has been done. The case of the plaintiff on subletting aspect has been found to be oscillating. At various stages, allegation of sub-tenancy changes the colour. Initially it is alleged that the property is sublet to

defendant nos.2 and 3 and then, at a later point of time to defendant nos.4,5,6 and 7. The Courts below have, therefore, rightly concluded that the fact of subletting cannot be said to have been properly proved. In the opinion of this Court, no interference is called for as the appreciation of evidence does not go to the root of the case, when it is established that the tenant has been in possession of the suit premises and if the property was sublet as alleged to any of the defendant nos.2 to 7, the defendant no.1 could not have been in possession. Whatever may be the relationship between defendant no.1 on one side and the other defendants on the other side and even if it is presumed that other defendants are also in possession, it cannot be given a colour of subletting because of the possession of the defendant no.1. The subletting has to presuppose parting of possession by the tenant in favour of the alleged sub-tenant. That element being absent, ground of subletting cannot be said to have been proved and could not have been accepted by the Courts below.

9. So far as the damage to property is concerned or the permanent construction is concerned, Courts below have concurrently found that it has not been established by the plaintiff. The plaintiff has, in terms, admitted that he has not entered the premises for a long time and has not seen construction as alleged. On aspect of nuisance and annoyance also, the evidence of the plaintiff clearly indicates that no neighbour has ever complained to him. He has not examined any neighbour to establish this aspect of nuisance and annoyance. Both the Courts below have taken these aspects into consideration and have come to a conclusion that these points are not proved by the plaintiff.

9.1 With the concurrent finding of fact recorded by both the Courts below and in absence of any error of law going to the root of the case, this Court is not supposed to exercise its jurisdiction and exercise powers under Section 29 of the Rent Act, as such Revision Application must fail.

9.2 However, considering the fact that the revisionist is appearing as party-in-person and is not aided by a legal expert, this Court has, with a view to ensure the ends of justice, undertaken the exercise of scanning the evidence to find that no error is committed by Courts below as stated earlier.

10. In this view of the matter, even on screening the evidence, no error can be said to have been committed by

the Courts below and no interference is, therefore, called for in exercise of revisional powers under Section 29(2) of the Rent Act. The scope of Revision being limited as per the decision in the case of Kasam Ismailbhai (Supra) and Patel Valmik Himatlal (Supra), the Revision Application, therefore, must fail, stands dismissed. No order as to costs.

(A.L.Dave,J.)

(vipul)